

# Inspector General

United States  
Department of Defense



Additional Actions Can Further Improve the DoD  
Suspension and Debarment Process

Report Documentation Page				Form Approved OMB No. 0704-0188	
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1. REPORT DATE <b>14 JUL 2011</b>		2. REPORT TYPE		3. DATES COVERED <b>00-00-2011 to 00-00-2011</b>	
4. TITLE AND SUBTITLE <b>Additional Actions Can Further Improve the DoD Suspension and Debannet Process</b>				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>Department of Defense Inspector General, 400 Army Navy Drive, Arlington, VA, 22202-4704</b>				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release; distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>Same as Report (SAR)</b>	18. NUMBER OF PAGES <b>42</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

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## Acronyms and Abbreviations

AIO	Acquisition Integrity Office
DLA	Defense Logistics Agency
DUNS	Data Universal Numbering System
EPLS	Excluded Parties List System
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GSA	General Services Administration
IG	Inspector General
PLFA	Primary Level Field Activity
S&D	Suspension and Debarment



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
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July 14, 2011

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,  
TECHNOLOGY, AND LOGISTICS  
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL  
MANAGEMENT AND COMPTROLLER)  
DIRECTOR, DEFENSE LOGISTICS AGENCY  
NAVAL INSPECTOR GENERAL  
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Additional Actions Can Further Improve the DoD Suspension and Debarment  
Process (Report No. D-2011-083)

We are providing this report for your information and use. The Services and the Defense Logistics Agency had an effective suspension and debarment process, which helps to ensure that the Government is doing business only with responsible contractors. The Defense Logistics Agency contracting officers were referring poorly performing contractors for suspensions and debarments at a greater rate than the Services' contracting officers. As a result of the Services' contracting officers potentially not referring as many poorly performing contractors to the suspension and debarment officials for suspension or debarment, poorly performing contractors may still be receiving Federal contracts. We considered management comments on a draft of the report in preparing the final report.

Comments from the Director, Defense Procurement and Acquisition Policy, on the draft of this report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, we do not require any additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9071 (DSN 664-9071).

A handwritten signature in black ink, appearing to read "Bruce A. Burton", is positioned above the printed name.

Bruce A. Burton  
Deputy Assistant Inspector General  
Acquisition and Contract Management







# Results in Brief: Additional Actions Can Further Improve the DoD Suspension and Debarment Process

## What We Did

We reviewed documentation on the timeliness of DoD suspension and debarment (S&D) decisions and entering S&D information into the Excluded Parties List System (EPLS). We also reviewed the S&D process for the Services and the Defense Logistics Agency (DLA) to determine whether contracting officers referred poorly performing contractors to be suspended or debarred, whether contracting officers checked the EPLS before making contract awards, and whether contractors received contract awards after being listed in the EPLS. We reviewed a nonstatistical sample of 126 S&D contractor case files from the Services and DLA, which included 409 contractors for FYs 2007 through 2009.

## What We Found

The S&D decisionmaking process and data entry into EPLS appeared to be done in a timely manner. The Services and DLA processed S&D cases differently; therefore, we could not determine comparable portions of their S&D decision-making process. We were able to measure different portions of the S&D decision-making processes for timeliness for the Army, Navy, and DLA. The Army averaged about 2 days, the Navy averaged about 4 days, and DLA about 11 days for the S&D official to make S&D decisions using their respective processes, which included different start dates for each Component. The Air Force did not document the submission of the S&D case file to the S&D official and timeliness could not be measured. Army, Navy, Air Force, and DLA S&D personnel averaged 1.7 working days between the date of the notice of suspension, debarment, or proposed debarment and the creation date for the EPLS account.

The Services' S&D officials did not suspend or debar as many contractors based on poor

performance as did the DLA S&D official. The Services' S&D officials issued S&D actions based on poor performance for 8 of 87 S&D case files reviewed. According to the Services' contracting personnel interviewed, they had little to no involvement with suspending and debarring contractors. The DLA S&D official issued S&D actions based on poor performance for 24 of 39 S&D case files reviewed. As a result of the Services' contracting officers not referring as many poorly performing contractors, these contractors may still be receiving contracts. The Services' and DLA contracting personnel awarded 17 contract actions, valued at about \$600,000, to 8 suspended or debarred contractors after the contractors were listed in the EPLS.

## What We Recommend

We recommend that the Director, Defense Procurement and Acquisition Policy:

- develop a working group to review and improve the S&D process for referring poorly performing contractors for potential suspensions or debarments,
- develop a training program to inform contracting personnel of the S&D program and the process for referring poorly performing contractors, and
- conduct training for contracting personnel on checking the EPLS before awarding contracts.

## Management Comments and Our Response

The Director, Defense Procurement and Acquisition Policy, agreed with all three of our recommendations and will establish a working group to review the S&D process and develop a contracting personnel training program. We consider the Director's comments to be responsive. No further comments are required.

## Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Director of Defense Procurement and Acquisition Policy		B.1, B.2, and B.3

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# Introduction

## Audit Objectives

We reviewed the timeliness of DoD suspension and debarment (S&D) decisions and entering S&D information into the Excluded Parties List System (EPLS). Specifically, we determined how long it took for the suspension or debarment to go into effect once a decision was made.

Additionally, we expanded our scope to review the S&D process for the Services and Defense Logistics Agency (DLA) to determine whether contracting officers referred poorly performing contractors to be suspended or debarred, whether contracting officers checked the EPLS before making contract awards, and whether contractors received contract awards after being listed in the EPLS. See Appendix A for a discussion of our scope and methodology and prior coverage.

## Background on Suspensions and Debarments

The purpose of S&D is to ensure agencies solicit offers from, award contracts to, and consent to subcontracts with responsible contractors. S&D officials may suspend, debar, or propose debarment, to severely restrict the contractors ability to contract with the Government by placing them on the EPLS or they may enter into an administrative agreement with a contractor to subject them to rigorous oversight. S&D officials review S&D case files based on criminal and civil actions against contractors for fraud and other misconduct (judicial-based cases) or on negative contractor actions not subject to legal action such as poor performance (fact-based cases). Agencies cannot solicit offers from, award contracts to, or consent to subcontracts with contractors that are suspended, debarred, or proposed for debarment unless the agency head determines that there is a compelling reason for such action. Agencies may continue contracts or subcontracts in place at the time the contractor was suspended, debarred, or proposed for debarment.

The Army, Navy,<sup>1</sup> Air Force, and DLA each have their own S&D official and procedures to supplement the S&D authorities in the Federal Acquisition Regulation (FAR) Subpart 9.4, “Debarment, Suspension, and Ineligibility,” and Defense Federal Acquisition Regulation Supplement Subpart 209.4, “Debarment, Suspension, and Ineligibility.” DoD S&D personnel work to coordinate fraud remedies in accordance with DoD Instruction 7050.05, “Coordination of Remedies for Fraud and Corruption Related to Procurement Activities,” June 4, 2008. DoD Instruction 7050.05 states that “each DoD Component shall monitor, from its inception, all significant investigations of fraud or corruption related to procurement activities affecting its organization.” DoD Components monitor the investigations of fraud or corruption to ensure that all possible criminal, civil, contractual, and administrative remedies are communicated to procurement and command personnel and that the appropriate remedies are pursued promptly.

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<sup>1</sup> The Navy S&D official is the S&D official for the Department of the Navy, including the Marine Corps, but will be referred to as the Navy S&D official in this report.

## ***Suspension***

An S&D official suspends contractors to exclude them from receiving contracts while waiting for the conclusion of an investigation and any ensuing legal proceedings. For an S&D official to suspend a contractor, the contractor does not have to be indicted or convicted of a crime. An S&D official may also suspend a contractor upon adequate evidence of any other cause so serious or compelling a nature that it affects the present responsibility of a contractor. FAR 9.407-1, “General,” states that:

Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government’s interest.

It also states that:

Suspension constitutes suspension of all divisions or organizational elements of the contractor, unless the decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates<sup>2</sup> of the contractor if they are-

- (1) Specifically named; and
- (2) Given written notice of the suspension and an opportunity to respond.

A contractor can, within 30 calendar days after receipt of the notice of suspension, submit information and argument in opposition to the suspension. The EPLS includes suspended contractors.

## ***Proposed Debarment***

An S&D official proposes contractors for debarment to exclude them from receiving contracts. An S&D official may propose debarment based either on a conviction, civil judgment, or preponderance of the evidence establishing cause for debarment. A contractor can, within 30 calendar days after receipt of the notice of proposed debarment, submit information and argument in opposition to the proposed debarment and request a hearing with the S&D official before a final debarment decision. A proposed debarment has the same effect as a debarment under FAR 9.405, “Effect of Listing.” The EPLS includes contractors proposed for debarment.

## ***Debarment***

An S&D official debars contractors to exclude them from receiving contracts for a period of time proportionate with the seriousness of the offense. FAR 9.406-4, “Period of Debarment,” states that “generally, debarment should not exceed 3 years.” An S&D official may debar a contractor based on a conviction or civil judgment for specified crimes and offenses. An S&D official may also debar contractors based on a preponderance of the evidence for specified conduct, including willful or repeated

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<sup>2</sup> Affiliates are organizations or individuals who are directly related to the primary case file, either one controls or has the power to control the other or a third party has the power to control both.

violations of the terms of a Government contract and for any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor. FAR 9.406-1, "General," states that:

Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor if they are-

- (1) Specifically named; and
- (2) Given written notice of the proposed debarment and an opportunity to respond.

The EPLS includes debarred contractors.

### ***Administrative Agreements***

An S&D official can enter into an administrative agreement with a contractor in lieu of suspending or debarring them when they are convinced that the Government's interests can be protected without suspension or debarment. An administrative agreement usually includes a requirement for a code of ethics, a training and compliance program, and a mechanism for reporting misconduct. Using an administrative agreement allows the S&D official rigorous oversight of the contractor and the ability to monitor and scrutinize contractor operations. In addition, a contractor violating the terms of an agreement provides an independent cause for debarment.

### ***Judicial-Based Suspensions and Debarments***

Judicial-based suspensions and debarments result from a number of crimes including fraud relating to a Government contract; a number of specific offenses, regardless of the existence of a public contract; and any other offense indicating a lack of business integrity that seriously affects a contractor's present responsibility. An S&D official is authorized by FAR 9.407-2, "Causes for Suspension," to suspend a contractor suspected of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract if there is adequate evidence. Contractors committing mail fraud or interstate transportation of stolen property are examples of judicial-based cases.

### ***Fact-Based Suspensions and Debarments***

A contractor's misconduct related to the performance of Government contracts is a justification for a fact-based suspension or debarment. An S&D official is authorized by FAR 9.406-2, "Causes for Debarment," to debar a contractor for "willful failure to perform in accordance with the terms of one or more contracts; or a history of failure to perform, or of unsatisfactory performance of, one or more contracts." An S&D official may also suspend or debar contractors for the commission of any other offense indicating lack of business integrity or business honesty that seriously and directly affects the present responsibility. A contractor violating the Drug-Free Workplace Act is an example of a fact-based case.

## ***Compelling Needs***

FAR 9.405 states that:

Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action.

If an agency head determines that there is a compelling need to do business with an excluded contractor, Defense Federal Acquisition Regulation 209.405 requires written notice of the determination to the General Services Administration (GSA), Office of Acquisition Policy.

## ***Continuation of Current Contracts***

Agencies are permitted under FAR 9.405-1, “Continuation of Current Contracts,” to continue contracts or subcontracts in place at the time the contractor was suspended, debarred, or proposed for debarment unless the agency head instructs otherwise. According to the FAR 9.405-1, ordering activities must not place orders or add new work, including exercising options to extend current contracts without the agency head approval for contractors who are suspended, debarred, or proposed for debarment.

## ***Excluded Parties List System***

Agencies identify in the EPLS those parties excluded by a suspension, debarment, or proposed debarment from receiving Federal contracts or certain subcontracts and from certain types of Federal financial and nonfinancial assistance and benefits. The EPLS database is available at <http://epls.gov>, as required by FAR 9.404, “Excluded Parties List System.” GSA operates the web-based EPLS and provides technical assistance to Federal agencies in the use of the EPLS.

FAR 9.404, states that the EPLS includes the:

1. Names and addresses of all contractors debarred, suspended, proposed for debarment, declared ineligible, or excluded or disqualified under the nonprocurement common rule, with cross-references<sup>3</sup> when more than one name is involved in a single action;
2. Name of the agency or other authority taking the action;
3. Cause for the action or other statutory or regulatory authority;
4. Effect of the action;
5. Termination date for each listing;
6. Data Universal Numbering System (DUNS) No.;
7. Social Security Number, Employer Identification Number, or other Taxpayer identification Number, if available; and
8. Name and telephone number of the agency point of contact for the action.

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<sup>3</sup> EPLS identifies the relationship of an exclusion involving more than one individual and/or firm by linking and marking one record as the primary listing and the other(s) as a cross-reference to the primary listing. A record marked as the primary listing will list all parties associated with the exclusion. A record marked as a cross-reference will identify its association to a related primary record.

Contracting officers are required under FAR 9.405 to review the EPLS after the opening of bids or receipt of proposals. Contracting officers must again review the EPLS immediately before award to ensure that no award is made to a contractor listed in the EPLS.

## Interagency Suspension and Debarment Committee

Exec. Order No. 12,549, 51 *Fed. Reg.* 6370 (1986), directed the establishment of the Interagency Suspension and Debarment Committee. The Committee includes about 50 member agencies from the Services, DLA, and many other Federal agencies. The Committee serves as a forum for agencies to consider and discuss current S&D-related issues. Committee members meet monthly to discuss topics of interest in Government-wide S&D including assisting GSA in the administration of the EPLS and the incorporation of administrative agreements in the Federal Awardee Performance Integrity and Information System. The Committee monitors participation in the Government-wide S&D system and ensures Executive departments and agencies issue regulations with Government-wide criteria and minimum due process procedures when suspending or debaring contractors.

## Suspension and Debarment Cases Reviewed

We reviewed a nonstatistical sample of 126 S&D contractor case files, which included 409 contractors, affiliates, and imputed parties<sup>4</sup> for FYs 2007 through 2009 from the Services and DLA. As of March 2, 2010, 1,346 contractors, affiliates, and imputed parties were listed as suspended, debarred, or proposed for debarment in the EPLS. Some of the contractors we reviewed are no longer suspended or debarred. Table 1 shows the number of S&D contractor case files and the number of contractors including affiliates and imputed parties we reviewed for the Services and DLA.

**Table 1. Nonstatistical Sample of S&D Contractor Cases Reviewed for FYs 2007 through 2009\***

<b>DoD Component</b>	<b>Cases</b>	<b>Fact-Based Cases</b>	<b>Judicial-Based Cases</b>	<b>Contractors**</b>
Army	27	4	23	72
Navy	32	6	26	64
Air Force	28	12	16	137
DLA	39	30	9	136
<b>Total</b>	<b>126</b>	<b>52</b>	<b>74</b>	<b>409</b>

\*The audit team reviewed a nonstatistical sample of S&D contractor case files, and the sample does not generalize to the universe; therefore, audit results should not be projected across all suspended or debarred contractors.

\*\*Includes affiliates and imputed parties.

<sup>4</sup> An imputed party is a contractor being held accountable for the actions of an associated individual who is acting on behalf of the contractor; an individual who participated in, knew of, or had reason to know of an associated contractor's actions being held accountable for the actions of that contractor; or contractors being held responsible for the actions of other contractors that they are participating in joint ventures with for conduct that occurred on the behalf of the joint venture.



## **Review of Internal Controls**

The Services and DLA's internal controls over their S&D programs were effective as they applied to the audit objectives.

## **Finding A. Time Frames for S&D Officials' Decisions to Suspend or Debar Contractors and Their Entry Into the EPLS**

The Services' and DLA S&D personnel were required to follow DoD criteria, which require prompt reporting and timely decisionmaking, and helped to ensure that the Government is doing business only with responsible contractors. However, DoD criteria do not establish a specific time frame for S&D decisions, and the Services and DLA were not required to comply with a specific time frame for making S&D decisions. Therefore, we were unable to establish a consistent start date to document the entire S&D process.

However, we were able to measure different portions of the S&D decisionmaking processes for timeliness for the Army, Navy, and DLA.<sup>5</sup> The Army averaged about 2 days, the Navy averaged about 4 days, and DLA averaged about 11 days for the S&D official to make S&D decisions using their respective processes, which included different start dates for each Component. Also, according to Air Force personnel, the Air Force did not document the submission of the S&D case file to the S&D official, and timeliness could not be measured.

Army, Navy, Air Force, and DLA S&D personnel averaged 1.7 working days between the date of the notice of suspension, debarment, or proposed debarment and the date the EPLS account was created for the 126 S&D case files reviewed.

### **The S&D Decisionmaking Processes for the Services and DLA Varied**

The Services and DLA processed their S&D cases differently; therefore, we could not determine comparable portions of their S&D decisionmaking process for timeliness. Army S&D personnel used unofficial tracking sheets to process S&D cases at the Procurement Fraud Branch that show when a case file was submitted to the S&D official. Army S&D personnel provided tracking sheets for our review for 22 of 27 S&D case files. The Army S&D official averaged about 2 days to make a decision once the case file was received. Navy S&D personnel used a memorandum prepared internally by an attorney recommending S&D action to process S&D cases at the Navy Office of the General Counsel's Acquisition Integrity Office (AIO). Navy S&D personnel provided the memorandum recommending S&D action for our review for 30 of 32 S&D case files. The Navy S&D official averaged about 4 days to make a decision once the memorandum was received. According to Air Force personnel, the Air Force does not document the submission of S&D case files to the Air Force S&D official and timeliness could not be

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<sup>5</sup> The Army, Navy, and DLA did not provide documentation of timeliness for all of the S&D case files reviewed.

measured. DLA S&D personnel at the Primary Level Field Activity <sup>6</sup> (PLFA) used a recommendation memorandum to refer S&D cases to DLA Headquarters. DLA S&D personnel provided recommendation memoranda for review for 27 of 39 S&D case files. The DLA S&D official averaged about 11 days to make a decision once the recommendation to suspend or debar a contractor was sent from the PLFA. This time frame included the time it took to mail documentation from the PLFA to DLA Headquarters and the time it took to process the case file at DLA Headquarters before it was submitted to the DLA S&D official.

The Services and DLA differed in the way they processed S&D cases. The Services used a centralized approach for S&D. The Army Procurement Fraud Branch monitored and coordinated cases of fraud. The Navy Office of the General Counsel's AIO monitored and ensured coordination of all acquisition integrity matters. The Air Force Deputy Counsel (Contractor Responsibility) was responsible for the Air Force's procurement fraud remedies program and exercised the suspension and debarment authority. DLA S&D personnel had a decentralized approach and received most of their referrals as complete packages from PLFA contracting personnel.

### ***Army S&D Timeliness and Process***

The Army S&D official averaged about 2 days to make a decision once the case file was received. Army S&D personnel used unofficial tracking sheets to process S&D cases at the Procurement Fraud Branch that show when a case file was submitted to the S&D official. Army S&D personnel provided the tracking sheets for our review for 22 of 27 S&D case files. Army personnel were required to follow the Army Federal Acquisition Regulation Supplement 5109.406, "Contractor Qualification," which describes prompt reporting of S&D cases as essential but does not outline a specific time frame for the S&D decisionmaking process.

The Procurement Fraud Branch was the single, centralized organization in the Army that monitored and coordinated criminal, civil, contractual, and administrative remedies for significant cases of fraud or corruption within the Army. The Procurement Fraud Branch serves and protects our soldiers, the taxpayer, and the overall integrity of the Government procurement process and the Army's S&D Program. In addition to the S&D official located in Arlington, Virginia, the Army was the only Service with regional S&D officials, one in Korea and one in Germany. The Procurement Fraud Branch's mission is to:

- process, coordinate, and monitor all criminal, civil, contractual, and administrative actions involving contract fraud or corruption perpetrated against the Department of the Army;
- support the Army and regional S&D officials' efforts and execute S&D officials' decisions on all S&D actions;

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<sup>6</sup> Primary Level Field Activities included DLA Land and Maritime in Columbus, Ohio; DLA Aviation in Richmond, Virginia; DLA Troop Support in Philadelphia, Pennsylvania; DLA Energy at Fort Belvoir, Virginia; DLA Distribution in New Cumberland, Pennsylvania; and DLA Disposition Services in Battle Creek, Michigan.

- report contractors suspended or debarred to GSA; and
- assist the Department of Justice in all criminal and civil litigation matters concerning fraud-related cases within the Department of the Army.

In addition to the Procurement Fraud Branch, each Army installation had a designated Procurement Fraud Advisor who serves as a local point of contact for procurement fraud matters. According to personnel within the Procurement Fraud Branch, most S&D cases originated from the Army Criminal Investigation Division, and they rarely received S&D cases directly from contracting personnel. The Army S&D official determined whether to suspend or debar a contractor and signed the decision memorandum. Procurement Fraud Branch personnel entered the information into the EPLS.

### ***Navy S&D Timeliness and Process***

The Navy S&D official averaged about 4 days to make a decision once the memorandum recommending S&D action was received. Navy S&D personnel used a memorandum prepared internally by an attorney recommending S&D action to process S&D cases at the Navy Office of the General Counsel's AIO. Navy S&D personnel provided the memoranda recommending S&D action for our review for 30 of 32 S&D case files. Navy personnel were required to follow Navy Marine Corps Acquisition Regulation Supplement Subpart 5209.4, "Debarment Suspension and Ineligibility," which requires all S&D matters to be referred to the Assistant General Counsel but does not outline a specific time frame for the S&D decisionmaking process.

The Office of the General Counsel's AIO was the Navy's centralized organization for acquisition integrity matters, and the Assistant General Counsel (Acquisition Integrity) was the Navy's designated S&D official. The AIO's mission is to:

- provide a Navy-wide program that will deter acquisition fraud to the maximum extent possible,
- detect acquisition fraud when and where it occurs,
- protect the Department of the Navy from the effects of acquisition fraud,
- take appropriate action against those who commit acquisition fraud, and
- recover fraudulent gains.

Attorneys, a senior Naval Criminal Investigative Service agent, and a senior Naval Audit Service auditor are part of the AIO team. According to Navy S&D personnel, about 95 percent of S&D cases originated from the Naval Criminal Investigative Service, and S&D cases may be initiated from the contracting officer through the Naval Criminal Investigative Service, but the AIO usually does not receive S&D cases directly from contracting officers. The AIO did not receive complete referral packages or S&D recommendations from contracting officers; however, AIO personnel received the majority of S&D cases from the Naval Criminal Investigative Service. The Navy S&D official determined whether to suspend or debar a contractor and signed the decision memorandum. Navy Office of General Counsel personnel entered the information into the EPLS.

The Navy S&D official stated that when the AIO was created, AIO personnel established procurement fraud working groups at Echelon 2 commands composed of a representative from contracts, the Office of Inspector General (IG), the Naval Criminal Investigative Service, the Command Office of Counsel, and an AIO attorney. According to the Navy S&D official, the procurement fraud working groups ensure coordination and transparency in all acquisition fraud matters at those commands. She also stated that the groups meet quarterly to discuss the latest developments in acquisition fraud and the status of cases and to facilitate communication between the contracting community, the AIO, and its partners who investigate or audit fraud allegations. The Navy S&D official stated that the procurement fraud working group concept has expanded to lower echelon activities.

### ***Air Force S&D Timeliness and Process***

According to Air Force personnel, the Air Force does not document the submission of the S&D case file to the S&D official, but the S&D official usually signs the decision documents within 2 days of submission by the staff. Air Force personnel stated that the decision memorandum submitted to the S&D official fully establishes the basis for the S&D action and that it would be redundant to prepare a separate recommendation memorandum to be submitted to the S&D official. Air Force personnel were required to follow Air Force Federal Acquisition Regulation Supplement Part 5309, “Contractor Qualifications,” which requires prompt notification of legal counsel of potential S&D cases but does not outline a specific time frame for the S&D decisionmaking process.

The Deputy General Counsel (Contractor Responsibility) was responsible for the Air Force Procurement Fraud Remedies Program and was the designated S&D official for the Air Force. The Deputy General Counsel (Contractor Responsibility) was a full-time S&D official and was supported by a staff that includes an Assistant Deputy General Counsel with an acquisition background and the Director of the Air Force Procurement Fraud Remedies Office. The S&D official ensures that the Air Force does not do business with non-responsible contractors and subcontractors. The Deputy General Counsel’s (Contractor Responsibility) mission is to:

- serve as the Air Force’s S&D authority,
- coordinate procurement fraud remedies for Air Force contracts worldwide, and
- promote contractor ethics in the United States and globally.

The Procurement Fraud Team ensures that all appropriate fraud remedies are considered and implemented, works to prevent fraud before it happens, educates Air Force personnel on preventing and remedying fraud, coordinates with the Department of Justice, and encourages contractors to prevent fraud. According to Air Force S&D personnel, the Air Force’s program relies on frequent coordination among procurement fraud stakeholders and the head of Air Force contracting and her staff meet regularly with the Air Force S&D official and the Director of Procurement Fraud Remedies. Air Force S&D personnel stated that the Air Force’s major buying centers also coordinate several times a year at procurement fraud working group meetings.

According to Air Force S&D personnel, the majority of the Air Force's S&D cases originated from the Air Force's monitoring of significant procurement fraud and corruption cases involving Air Force contracts, and they did not receive referral packages directly from contracting officers. They built their S&D cases from the information they were given by the Air Force Office of Special Investigations or any other sources. The Office of Fraud Remedies reviewed case status reports and/or case remedies reports to determine whether the Air Force was interested and whether they should pursue the case for S&D action. The Office of Fraud Remedies also received information from the Department of Justice. The Air Force S&D official determined whether to suspend or debar a contractor and signed the decision memorandum. The Deputy General Counsel (Contractor Responsibility) personnel entered the information into the EPLS.

### ***Defense Logistics Agency S&D Timeliness and Process***

The DLA S&D official averaged about 11 days<sup>7</sup> between the time the PLFA sent the recommendation to suspend or debar the contractor and the date the S&D official made a decision by signing the notice of suspension or debarment to the contractor. This time frame included the time it took to mail documentation from the PLFA to DLA Headquarters and the time it took to process the case file at DLA Headquarters before it was submitted to the DLA S&D official. DLA S&D personnel provided the memorandum from the PLFA recommending S&D action for our review for 27 of 39 S&D case files. DLA S&D personnel were required to follow DLA Directive Subpart 9.406-90, "Procedures for Debarments Based on Poor Performance," which requires timely and effective action on referrals of S&D cases but does not outline a specific time frame for the decision process to suspend or debar contractors.

DLA had a decentralized process for pursuing S&D cases against its contractors that is generally coordinated with one of the PLFA sites. The DLA Special Assistant for Contracting Integrity, Office of General Counsel, had S&D authority for DLA. The Special Assistant for Contracting Integrity also had S&D authority over contractors who buy Federal property from the DLA Disposition Services.<sup>8</sup>

DLA PLFAs were responsible for the majority of S&D referrals. DLA PLFA legal offices had attorneys specifically assigned to work fraud cases. Local fraud counsels determined whether they had reasonable grounds to believe wrongdoing had occurred. If so, they referred the case to the Defense Criminal Investigative Service. The local fraud counsels coordinated actions and initiatives with an attorney at the DLA Headquarters Office of General Counsel who managed the fraud program for the agency.

The DLA contracting officer recommended through the PLFA chain of command to the DLA Headquarters Office of General Counsel that a contractor be suspended or debarred from Government contracting because of poor performance. Defense Logistics Acquisition Directive Subpart 9.406-90 describes the process for excluding contractors

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<sup>7</sup> The average of about 11 days includes both workdays and weekends.

<sup>8</sup> During the audit, DLA renamed its component entities. Defense Reutilization and Marketing Services is now DLA Disposition Services.



based on poor performance. Defense Logistics Acquisition Directive Subpart 9.406-90 states that “the contracting officer must initiate timely, effective action to ensure that the Government’s business interests are protected when a contractor’s action or inaction threatens successful contract performance.” The contracting officer must be able to document the contractor’s poor performance before referring a contractor to local counsel for preparation of a debarment report. The contracting officer must also be able to illustrate why the only reasonable alternative available left to the Government is debarment. The PLFA Commander reviews, signs, and forwards each recommendation to DLA Headquarters Office of the General Counsel. The DLA Special Assistant for Contracting Integrity evaluates the recommendation to determine whether S&D action was warranted. If the Special Assistant for Contracting takes S&D action, it becomes a permanent part of the administrative record that is provided to the contractor. DLA Headquarters Office of General Counsel personnel entered the information into the EPLS.

## **The Services’ and DLA S&D Officials Entered Information Into the EPLS in a Timely Manner**

The Services’ and DLA S&D personnel entered information into the EPLS in a timely manner once the decision to suspend or debar the contractor had been made. The Services’ and DLA S&D personnel, on average, entered contractors into the EPLS in about 1.7 working days after the notice of suspension, debarment, or proposed debarment was sent to the contractor for the 126 case files we reviewed. The Services’ and DLA

*The Services and DLA S&D personnel entered information into the EPLS in a timely manner once the decision to suspend or debar the contractor had been made.*

S&D personnel are required by FAR 9.404 to enter the EPLS information within 5 working days after the action becomes effective. The Services and DLA averaged less than the 5-working-day limit prescribed in FAR 9.404. The Services’ and DLA S&D personnel took longer than the 5-working-day limit for 8 of the 126 case files we reviewed. Table 2 shows the average number of working days between the notice of suspension, debarment, or proposed debarment and the EPLS account creation date.

**Table 2. Average Number of Days Between Notice and EPLS Creation**

<b>DoD Component</b>	<b>Average Number of Working Days Between Notice and EPLS Creation Date</b>
Army	2.7*
Navy	1.6
Air Force	.5
DLA	2.1
The Services and DLA	1.7

\*We excluded one entry from the calculation of the average number of days between the notice and the EPLS account creation date for the Army because the contractor was not listed in the EPLS despite documentation provided by the Army showing an EPLS account was created the same day the notice was sent to the contractor. Army personnel created a new account into EPLS the same day we notified them of the missing entry.

## Summary

The Services' and DLA S&D personnel were required to follow DoD criteria, which require prompt reporting and timely decisionmaking, and helped to ensure that the Government is doing business only with responsible contractors. The Services and DLA processed their S&D cases differently; therefore, we could not determine comparable portions of their S&D decisionmaking process for timeliness. However, we were able to measure different portions of the S&D decisionmaking process for timeliness for the Army, Navy, and DLA. The Army averaged about 2 days, the Navy averaged about 4 days, and DLA averaged about 11 days for the S&D official to make S&D decisions using their respective processes. According to Air Force personnel, the Air Force does not document the submission of the S&D case file to the Air Force S&D official and timeliness could not be measured. The Services' and DLA S&D officials were required to follow FAR 9.404 and, on average, entered contractors into the EPLS in about 1.7 working days after the notices of suspension, debarment, or proposed debarment were sent to the contractor for 126 S&D case files reviewed.

## **Finding B. Contracting Officer Involvement in the S&D Process Could Be Improved**

The Services' S&D officials did not suspend or debar as many contractors based on poor performance as did the DLA S&D official for the 126 S&D case files reviewed.<sup>9</sup> The Services' S&D officials issued S&D actions based on poor performance for 8 of 87 S&D case files reviewed. The DLA S&D official issued S&D actions based on poor performance for 24 of 39 S&D case files reviewed. DLA contracting personnel stated that they referred poorly performing Government contractors for S&D. According to the Services' contracting personnel, the contracting officers had little to no involvement in suspending and debaring Government contractors. As a result of the Services' contracting officers potentially not referring as many poorly performing contractors to the S&D officials for suspension or debarment, poorly performing contractors may still be receiving Federal contracts.

In addition, the contracting personnel from the Services and DLA stated that they checked the EPLS to determine whether contractors were listed as suspended or debarred before awarding contracts. However, the Services' and DLA contracting officers awarded 17 contract actions,<sup>10</sup> valued at about \$600,000, to 8 of the 409 S&D contractors, affiliates, and imputed parties reviewed, after they were listed in the EPLS. Contracting officers awarded contracts to suspended and debarred contractors for a variety of reasons, including typographical or input errors when searching the EPLS before awarding contracts.

### **Contracting Officer Involvement With the S&D Process: Potential for More Fact-Based Suspensions and Debarments**

The DLA S&D official issued more fact-based S&D actions than the Services' S&D officials. DLA contracting officers referred poorly performing contractors to be suspended and debarred while the Services' contracting personnel stated that they had little to no involvement with the S&D process. The way the Services' and DLA contracting officers handled poorly performing contractors varied. According to the Services' contracting personnel we interviewed, they took corrective actions at the local field level instead of referring a contractor for potential suspension or debarment. Based on the interviews we conducted with contracting personnel at one contracting activity for each of the Services,<sup>11</sup> we determined that although contracting personnel were checking the EPLS to see whether contractors were suspended or debarred before awarding

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<sup>9</sup> The audit team reviewed a nonstatistical sample of S&D contractor case files, and the sample does not generalize to the universe; therefore, audit results should not be projected across all suspended or debarred contractors.

<sup>10</sup> In addition, we did not review 36 delivery orders issued on previously awarded contracts.

<sup>11</sup> The Services contracting sites we visited include Rock Island Arsenal, Illinois; Fleet and Industrial Supply Center, Norfolk, Virginia; and Air Force District Washington, Bolling Air Force Base, Washington D.C.

contracts, checking the EPLS was generally their only involvement in the S&D process. In contrast, DLA contracting personnel stated that they were actively involved with the S&D process and referred poorly performing contractors to be potentially suspended or debarred.

For the 126 S&D case files reviewed, the DLA S&D official issued a higher percentage of fact-based S&D actions because of contractor poor performance than the Services' S&D officials issued. Table 3 shows the comparison of fact-based suspensions and debarments for poor performance between the Services and DLA for the actions we reviewed.

**Table 3. Poor Performance Fact-Based Action Comparison\***

<b>DoD Component</b>	<b>Fact-Based Actions Based on Poor Performance</b>	<b>Total Number of Actions (Fact-Based &amp; Judicial-Based)</b>
Army	2	27
Navy	2	32
Air Force	4	28
<b>Total of Services</b>	<b>8</b>	<b>87</b>
DLA	24	39

\*The audit team reviewed a nonstatistical sample of 126 S&D case files, and the sample does not generalize to the universe; therefore, audit results should not be projected across all suspended or debarred contractors.

### ***The Services' Contracting Officers and the S&D Process***

The Services' contracting personnel had little to no involvement in the S&D process and did not refer poorly performing contractors to the S&D officials for fact-based suspensions and debarments for the S&D case files reviewed. We reviewed 87 S&D case files from the Services, and 79 of the case files were judicial-based or fact-based stemming from other reasons such as accepting gratuities or using public office for private gain. According to most of the contracting personnel we interviewed at three Services' contracting activities, they had little to no involvement with suspending and debarring Government contractors. Additional training would improve the contracting officers' awareness of the S&D process. The contracting personnel stated that they checked the EPLS multiple times during the award process to determine whether a contractor was listed as suspended or debarred before awarding a contract. The contracting officers included checklists in the contract pre-award file to document the completion of the EPLS check. However, for the contracting personnel we interviewed, checking the EPLS was typically their only involvement in the S&D process. The contracting officers stated that they initiated corrective action at the local field level against poorly performing contractors. Contracting personnel stated that they terminated the contract for default when the contractor performed poorly. For example, one contracting specialist stated that he worked directly with the contractors to try and resolve any performance issues.

An S&D official stated that contracting officers can issue a show cause notice<sup>12</sup> to avoid the need for S&D action. A contracting officer can issue a show cause notice, giving the contractor the opportunity to present its case as to why the contracting officer should continue with the contract. Contracting officers are authorized by the FAR to issue a show cause notice to a contractor before terminating the contract for default. FAR Paragraph 49.402-3(e)(1), "Procedure for Default," states:

If termination for default appears appropriate, the contracting officer should, if practicable, notify the contractor in writing of the possibility of the termination. This notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to show cause why the contract should not be terminated for default.

However, in our opinion, when a perpetually poorly performing contractor is not referred for a potential suspension or debarment by a contracting officer, the contractor may still receive additional contract awards both within DoD and from other Federal agencies.

### ***DLA Contracting Officers and the S&D Process***

The DLA S&D official issued a higher percentage of S&D actions for the 39 S&D case files reviewed based on poor performance than the Services' S&D officials. DLA contracting officers were actively involved with the S&D process to ensure action

*The DLA S&D official issued a higher percentage of S&D actions . . . than the Services' S&D officials. DLA contracting officers were actively involved with the S&D process to ensure action was taken against poorly performing contractors to protect the Government's interest.*

was taken against poorly performing contractors to protect the Government's interest. We reviewed 39 DLA S&D case files, and 24 S&D referrals were fact-based stemming from poor performance. DLA contracting personnel communicated with their fraud counsel to refer potential fact-based suspensions and debarments for poorly performing contractors. DLA contracting personnel searched the EPLS before awarding contracts to ensure that potential contractors were not suspended or debarred. In addition, DLA Land and Maritime<sup>13</sup> personnel created the Counterfeit Material and Unauthorized Product Substitution Team consisting of investigators, quality assurance personnel, legal personnel, laboratory technicians, and contracting personnel. If a contracting officer had problems with a contractor performing poorly

or suspected fraud, the contracting officer discussed the situation with the team to decide whether the case should be referred to DLA Headquarters. Similarly, DLA Aviation personnel stated that they used their fraud counsel and Fraud Waste and Abuse Office to address poor performance and fraud issues.

<sup>12</sup> The show cause notice advises the contractor of the consequences of a termination and asks the contractor to "show cause" why the contract should not be terminated.

<sup>13</sup> During the audit, DLA renamed its supply centers. Defense Supply Center Columbus is now referred to as DLA Land and Maritime. The Defense Supply Center Richmond is now referred to as DLA Aviation.

## ***Improving the S&D Process***

The Services' S&D officials did not issue as many S&D actions based on poor performance as the DLA S&D official. The Services' contracting personnel had little to no involvement with referring poorly performing contractors for suspension and debarment. If a suspension or debarment is not issued and a poorly performing contractor is not subsequently listed in the EPLS, Federal contracting officers do not know that poorly performing contractors are doing business with DoD, and the contractors may obtain additional contract awards. DoD officials should form a working group to review the S&D process to improve the process for referring poorly performing contractors for potential suspensions or debarments. In addition, DoD officials should develop a training program to inform contracting personnel about the S&D processes.

## ***Defense Procurement and Acquisition Policy Personnel Provide Training to Increase S&D Awareness***

Defense Procurement and Acquisition Policy personnel held a training conference in March 2011 and held a second training conference in May 2011, which included information on the S&D process. According to Defense Procurement and Acquisition Policy personnel, the conference in March 2011 included demonstrations on using the Contractor Performance Assessment Reporting System, the Past Performance Information Retrieval System, and the Federal Awardee Performance and Integrity Information System. Providing information on these systems will help ensure that quality information is available for contracting personnel to determine contractor responsibility. In addition, the conference held in May 2011 provided information on contractor past performance and the S&D process for contracting personnel.

## ***The Services' and DLA Contracting Officers Checked the EPLS Before Awarding Contracts***

The Services' and DLA contracting personnel we interviewed used the EPLS during the pre-award process to determine whether the contractors were suspended or debarred before awarding a contract. FAR 9.405, "Effect of Listing," requires contracting officers to review the EPLS after the opening of bids or receipt of any proposals. The Services' and DLA contracting personnel stated that they checked the EPLS during the award process to determine whether a contractor was listed as suspended or debarred. In addition, contracting officers from the Services used checklists to document the completion of the EPLS check. According to the Service contracting personnel interviewed, they included a checklist in the contract pre-award file to document the completion of the EPLS check.



## Contracting Officers Awarded Contracts to Suspended or Debarred Contractors

The Services' and DLA contracting officers awarded 17 contract actions, valued at about \$600,000, to 8 suspended or debarred contractors out of 409 S&D contractors, affiliates, and imputed parties reviewed, after they were listed in the EPLS. Although the contracting personnel from the Services and DLA checked the EPLS before awarding contracts, occasionally their searches yielded no results in the EPLS for the contractors. GSA personnel stated that they plan to improve the EPLS, which may address some of the issues.

### ***Suspended or Debarred Contractors Still Received Contract Awards***

The Services' and DLA contracting officers awarded 17 contract actions,<sup>14</sup> valued at about \$600,000, to 8 suspended or debarred contractors that were entered into the EPLS. Specifically, Navy contracting personnel from Naval Sea Systems Command Headquarters exercised two options on a contract, valued at \$449,352, after the contractor

*The Services and DLA contracting officers awarded 17 contract actions, valued at about \$600,000, to 8 suspended or debarred contractors that were entered into the EPLS.*

was placed on the EPLS. Also, Air Force contracting personnel issued two modifications, valued at \$86,740, authorizing additional work under a new agreement with a contractor after the contractor was placed on the EPLS. In addition, contracting personnel from the Army, Navy, and DLA issued 13 purchase order contract actions, valued at \$81,068.75, to contractors after they were

entered into the EPLS as suspended or debarred. Army contracting personnel issued two of the purchase orders to contractors listed in the EPLS; Navy contracting personnel issued five purchase orders to contractors listed in EPLS; and DLA contracting personnel issued six.

We obtained the 17 contract actions by searching the Federal Procurement Data System-Next Generation (FPDS-NG)<sup>15</sup> to determine whether the contractors, affiliates, and imputed parties from the Services' and DLA S&D contractor case files had received any contract awards after being entered into the EPLS.

According to the FAR 9.405-1:

For contractors debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reason for doing so, ordering activities shall not—

<sup>14</sup> The Army and DLA awarded 2 of the 17 contract actions, valued at \$9,234, 2 days after the contractor was entered into the EPLS.

<sup>15</sup> FPDS-NG is an automated system used to report on Federal procurement spending. We searched the FPDS-NG for all of the contractors and affiliates to determine whether the contractors received Government contracts while listed in the EPLS and to compare contract award dates to action dates in the EPLS. See Appendix A for further information.

- (1) Place orders exceeding the guaranteed minimum under indefinite quantity contracts;
- (2) Place order under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or
- (3) Add new work, exercise options, or otherwise extend the duration of current contracts or orders.

Our point of contact at DLA Land and Maritime stated that one of the purchase orders was created to meet contract requirements, and that the other purchase order was a mistake on the part of the buyer. The buyer made the purchase order without addressing the fact that the awardee was suspended or debarred. An acquisition analyst and subject matter expert on the S&D process discussed the incident with the buyer and the buyer's supervisor. DoD officials should provide training to contracting personnel from the contracting activities listed in Appendix B, Table 1, to ensure that the EPLS is properly checked before awarding contracts. See Appendix B, Table B-1, for a list of suspended and debarred contractors that the Navy, Air Force, and DLA awarded contract actions to after the contractors were listed in the EPLS. In addition to actions awarded within DoD, other Federal agencies issued eight contract actions, valued at \$80,827, to contractors listed in the EPLS as suspended or debarred by the Services or DLA. See Appendix B, Table B-2, for a list of the suspended and debarred contractors to whom other Federal agencies awarded contract actions after the contractors were listed in the EPLS.

### ***Problems Encountered When Checking the EPLS***

Occasionally, contracting officers received no results from EPLS searches because of typographical and user input errors. According to the Services' and DLA contracting personnel, they are responsible for checking the EPLS for suspended or debarred contractors. If contracting personnel do not enter the contractor name in the search field exactly, including punctuation, then the search may not yield results for that contractor. For example, we searched the EPLS for one of the suspended and debarred contractors and found them listed in the EPLS. However, when Navy contracting personnel searched the EPLS, their search yielded no results for the same contractor. If the S&D personnel who create the contractor entry in the EPLS do not enter the contractor's name properly, it may cause problems for system users when they search the EPLS. The contracting personnel may search the EPLS using the contractor's DUNS number, but not all EPLS entries include the DUNS number. Therefore, the Services' and DLA contracting personnel were checking the EPLS, but the contracting officers may not be identifying whether the contractors are suspended or debarred.

### ***GSA Changes to the EPLS***

The EPLS currently contains entries without DUNS numbers and street addresses, making searches for individuals or contractors difficult. GSA is responsible for maintaining and managing the EPLS and for providing new users access to enter data into the EPLS. GSA personnel stated that they are in the process of updating the EPLS to ensure that all individuals and contractors are entered into the EPLS with a DUNS number and to standardize classifications across Government systems. Updating the EPLS to require a DUNS number and standardizing classifications should help system

users searching the EPLS. According to GSA personnel, International Business Machines is designing a system called Architectural and Operation Contract Support with the goal of integrating Government systems related to contract awards. GSA personnel stated that this system is scheduled to be put in place in 2012.

## **Recommendations, Management Comments, and Our Response**

### **B. We recommend that the Director of Defense Procurement and Acquisition Policy:**

**1. Develop a working group to review and improve the suspension and debarment process for referring poorly performing contractors for potential suspensions or debarments.**

#### ***Defense Procurement and Acquisition Policy Comments***

The Director, Defense Procurement and Acquisition Policy, agreed and stated that a working group composed of contracting personnel from the Services, DLA, and other Defense agencies will review the suspension and debarment process. He also stated that the working group will investigate the current procedures for referring poorly performing contractors for suspensions and debarments and will recommend best practices to improve the procedures. The estimated date of completion is February 2012.

#### ***Our Response***

The comments of the Director, Defense Procurement and Acquisition Policy, are responsive, and no further comments are required.

**2. Develop a training program to inform contracting personnel of the suspension and debarment program and the process for referring poorly performing contractors.**

#### ***Defense Procurement and Acquisition Policy Comments***

The Director, Defense Procurement and Acquisition Policy, agreed and stated that when the working group established in response to Recommendation B.1 approves the recommendations, a training program will be developed and implemented through a Defense Acquisition University course or by the Service or agency. The estimated date of completion is May 2012.

#### ***Our Response***

The comments of the Director, Defense Procurement and Acquisition Policy, are responsive, and no further comments are required.

**3. Conduct training for contracting personnel on checking the Excluded Parties List System before awarding contracts.**

***Defense Procurement and Acquisition Policy Comments***

The Director, Defense Procurement and Acquisition Policy, agreed and stated that contracting personnel are trained to check the Excluded Parties List System but must be reminded to check it again immediately before signing the award document. He also stated that training for contracting personnel on checking the Excluded Parties List System will be included in a Defense Acquisition University course. In addition, he stated that he will issue a memorandum to the acquisition community reminding them to check the Excluded Parties List System immediately before award. The estimated date of completion is May 2012.

***Our Response***

The comments of the Director, Defense Procurement and Acquisition Policy, are responsive, and no further comments are required.

## Appendix A. Scope and Methodology

We conducted this performance audit from March 2010 through May 2011, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable reason for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The DoD IG has not performed an audit on S&D since 1993, and that audit only focused on S&D reporting procedures for subcontractors. The Department of Homeland Security IG, Department of Transportation IG, and the U.S. Agency for International Development IG recently released reports on S&D that discussed problems with their execution of the S&D Process.

Our scope was limited to S&D cases in which the notice of suspension, debarment, or proposed debarment was dated between FY 2007 and FY 2009. We expanded our scope to review the S&D process for the Services and DLA to determine whether contracting officers referred poorly performing contractors to be suspended and debarred, whether contracting officers are checking the EPLS before making contract awards, and to determine whether contractors receive contract awards after being listed on the EPLS.

When we announced our objectives, we planned to determine the elapsed time between an S&D official receiving a referral and the S&D official making a decision on the case. However, we were unable to establish a consistent start date to document the entire S&D process for the Services and DLA. We were able to determine how long it took for the S&D officials to make a decision once they received an S&D case file for the Army and Navy, but the documentation used to determine start dates varied due to differences in their S&D processes. We were unable to document this time frame for the Air Force because the Air Force's S&D process did not require documentation of an S&D case file being submitted to the S&D official. We were also unable to document this time frame for DLA because DLA personnel did not maintain a tracking system of an S&D case file being submitted to the S&D official. However, we were able to determine how long it took the DLA S&D official to make a decision once the PLFA<sup>16</sup> sent a recommendation for suspension, debarment, or proposed debarment of a contractor.

## Universe and Sample Information

We selected a nonstatistical sample of S&D cases from the Services and DLA in which the notice of suspension, debarment, or proposed debarment was dated between FY 2007 and FY 2009 from the hard copy files the Services' and DLA S&D personnel provided. To obtain the total number of contractors, affiliates, and imputed parties in the EPLS, we

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<sup>16</sup> Primary Level Field Activities include DLA Land and Maritime in Columbus, Ohio; DLA Aviation in Richmond, Virginia; DLA Troop Support in Philadelphia, Pennsylvania; DLA Energy at Fort Belvoir, Virginia; DLA Distribution in New Cumberland, Pennsylvania; and DLA Disposition Services in Battle Creek, Michigan.

searched the EPLS for all S&D actions listed for each of the Services and DLA between October 1, 2006 and September 30, 2009. See the table for the total number of S&D contractor case files, affiliates, and imputed parties we reviewed, the total number of fact-based cases, fact-based cases because of contractor poor performance, and judicial-based cases as well as the total number of S&D contractors, affiliates, and imputed parties listed in the EPLS as of March 2, 2010.

**S&D Case Files From FY 2007 Through FY 2009 Reviewed**

<b>DoD Component</b>	<b>Number of Contractor Case Files Reviewed</b>	<b>Number of Contractors Reviewed*</b>	<b>Number of Contractors listed in the EPLS as of March 2, 2010*</b>	<b>Number of Fact-Based Cases Reviewed</b>	<b>Number of Fact-Based Cases Because of Poor Performance Reviewed</b>	<b>Number of Judicial-Based Cases Reviewed</b>
Army	27	72	460	4	2	23
Navy	32	64	207	6	2	26
Air Force	28	137	334	12	4	16
DLA	39	136	345	30	24	9
<b>Total</b>	<b>126</b>	<b>409</b>	<b>1346</b>	<b>52</b>	<b>32</b>	<b>74</b>

\*Includes affiliates and imputed parties.

We determined how long it took for the S&D officials to make a decision once they received an S&D case for the Army and Navy. The documentation we used to determine start dates varied due to differences in their S&D processes. We determined how long it took the DLA S&D official to make a decision once the PLFA sent a recommendation of suspension, debarment, or proposed debarment of a contractor.

To determine the start date for when the Army S&D official received the case file, we used the date on an unofficial tracking sheet that logs the date the S&D official received the file. We determined the elapsed time between the tracking sheet date and the date the S&D official made a decision by signing the notice of suspension, debarment, or proposed debarment to the contractor.

To determine the start date for when the Navy S&D official received the case file, we used the date on the memorandum for the Navy S&D official. The memorandum for the Navy S&D official is prepared by personnel within the AIO and includes a recommendation on what action should be taken by the S&D official. We determined the elapsed time between the date on the memorandum for the Navy S&D official and the date the S&D official made a decision by signing the notice of suspension, debarment, or proposed debarment to the contractor.

To determine the start date for when the PLFA sent a recommendation of suspension, debarment, or proposed debarment of a contractor, we used the date on the recommendation. The recommendation suggests what action should be taken by the S&D official. We determined the elapsed time between the date the PLFA sent the



recommendation and the date the S&D official made a decision by signing the notice of suspension, debarment, or proposed debarment to the contractor.

We determined the elapsed time between the S&D official deciding to suspend or debar the contractor listed in the case file and the contracting personnel adding the contractor to the EPLS by comparing the date on the suspension, debarment, or proposed debarment notice sent to the contractor with the creation date listed in EPLS. To obtain the creation date listed in the EPLS, we searched the EPLS to obtain each contractor, affiliate, or imputed party EPLS listing. Some of the contractors, affiliates, and imputed parties were no longer suspended or debarred; therefore, we had to search the EPLS archives section, which lists all contractors, affiliates, and imputed parties that had once been listed on the EPLS. We determined whether contractors that were listed in the EPLS as being suspended or debarred received contracts during that time by checking the FPDS-NG for the contractor's name. We searched the FPDS-NG using the names of the contractors, affiliates, and imputed parties listed in EPLS. We used the search results, which included contract award dates with an estimated value of \$3,000 or more, to compare contract award dates to action dates in EPLS.

We contacted our initial contracting personnel points of contact from the Services and DLA to obtain additional contract information for some of the contracts to determine whether an exception was granted allowing the awarding agency to award to an excluded contractor and the type of contract action that was made after the EPLS entry date. In addition, we searched the Electronic Document Access for contract information on these actions that occurred after the EPLS entry date. We calculated the length of time between the entry into the EPLS and when the actions were listed in the FPDS-NG.

We identified 36 delivery orders issued on previously awarded contracts. These delivery orders were placed on the contracts at the time contractors were listed in the EPLS. The FAR 9.405-1 allows agencies to continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the agency head directs otherwise. The FAR 9.405-1 also states that ordering activities shall not place orders exceeding the guaranteed minimum. The audit team was unable to determine whether these 36 contract actions exceeded the guaranteed minimum on the contracts without auditing each of the individual contracts to determine if the guaranteed minimum was previously met. Auditing the individual contracts was outside the scope of the audit; therefore we excluded the 36 contract actions.

## **Review of Documentation and Interviews**

We evaluated documentation against applicable criteria including:

- FAR Subpart 9.4, "Debarment, Suspension, and Ineligibility";
- FAR Subpart 49.4, "Termination for Default";
- Defense Federal Acquisition Regulation Supplement Part 209, "Contractor Qualifications";
- DoD Instruction 7050.05, "Coordination of Remedies for Fraud and Corruptions Related to Procurement Activities," June 4, 2008;

- Executive Order 12549, 51 *Fed. Reg.* 6370 (1986) “Debarment and Suspension,” February 18, 1986;
- Executive Order 12689, 3 CFR Comp., 235 (1989) “Debarment and Suspension,” August 16, 1989;
- *Federal Register*, volume 70, Number 168, “Rules and Regulations,” August 31, 2005;
- *Federal Register*, volume 68, Number 228, “Rules and Regulations,” November 26, 2003;
- Army Federal Acquisition Regulation Supplement Subpart 5109.4, “Debarment, Suspension, and Ineligibility”;
- Navy Marine Corps Acquisition Regulation Supplement Subpart 5209.4, “Debarment, Suspension, and Ineligibility”;
- Air Force Federal Acquisition Regulation Supplement Subpart 5309.4, “Debarment, Suspension, and Ineligibility”;
- Defense Logistics Acquisition Directive Subpart 9.4, “Debarment, Suspension, and Ineligibility”; and
- DLA Business Integrity Handbook, February 2002.

We interviewed S&D personnel to discuss the S&D process and to obtain information about suspensions and debarments at the:

- Army Procurement Fraud Branch Headquarters, Arlington, Virginia;
- The AIO, Navy Yard, Washington, D.C.;
- Deputy General Counsel (Contractor Responsibility) Air Force, Arlington, Virginia; and
- DLA Office of the General Counsel, DLA Headquarters, Fort Belvoir, Virginia.

We visited the following contracting activities to discuss the S&D process and the process for checking EPLS before awarding contracts. We also obtained information on suspensions and debarments at the:

- Rock Island Arsenal, Illinois, where we met with an Army procurement fraud advisor, contracting specialists, and contracting officers;
- Fleet and Industrial Supply Center, Norfolk, Virginia, where we met with Navy purchasing agents and contracting specialists;
- Air Force District Washington, Bolling Air Force Base, Washington D.C., where we met with Air Force contract specialists and contracting officers;
- DLA Land and Maritime, Columbus, Ohio, where we met with the fraud counsel, an engineer, contract administrators, contract specialists, and pre-award contract specialists; and
- DLA Aviation, Richmond, Virginia, where we met with the fraud counsel, contracting officers, fraud monitor, and the fraud supervisor.

In addition, we met with GSA personnel responsible for maintaining the EPLS, in Arlington, Virginia, to discuss the plans for future improvements to the EPLS.

## **Use of Computer-Processed Data**

We relied on computer-processed data from the EPLS to determine the number of S&D actions for FYs 2007 through 2009. To assess the accuracy of computer-processed data, we verified the EPLS data against official records at the contracting activities and S&D offices we visited. We determined that data obtained through the EPLS were sufficiently reliable to accomplish our audit objectives. We also used the EPLS to determine the dates the contractors, affiliates, and imputed parties were entered in the EPLS. There was no way to determine the reliability of these dates because no such date was listed in the S&D case file documents we reviewed. To assess the accuracy of computer-processed data, we verified the EPLS data against official records at the contracting activities and S&D offices we visited. We also used the FPDS-NG to determine whether any contractors, affiliates, or imputed parties received any contracts after being suspended or debarred. We used the Electronic Document Access to obtain contract information on the contract actions to determine the reason of the contract award. Consequently, we determined that the data were sufficiently reliable for the purposes of our audit.

## **Prior Coverage**

During the last 5 years, the Government Accountability Office, the Department of Homeland Security IG, the Department of Transportation IG, the United States Agency for International Development IG, and the GSA IG have issued five reports discussing S&D. Unrestricted Government Accountability Office reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted Department of Homeland Security IG reports can be accessed over the Internet at <http://www.dhs.gov>. Unrestricted Department of Transportation IG reports can be accessed over the Internet at <http://www.dot.gov>. Unrestricted United States Administration for International Development IG reports can be accessed over the Internet at <http://www.usaid.gov>. Unrestricted GSA IG reports can be accessed over the Internet at <http://www.gsaig.gov>.

### ***Government Accountability Office***

Government Accountability Office Report No. GAO-09-174, “Excluded Parties List System Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds,” February 25, 2009

### ***Department of Homeland Security IG***

Department of Homeland Security IG Report No. OIG-10-50, “DHS’ Use of Suspension and Debarment Actions for Poorly Performing Contractors,” February 2010

### ***Department of Transportation IG***

Department Of Transportation Report No. ZA-2010-034, “DOT’S Suspension and Debarment Program Does Not Safeguard Against Awards to Improper Parties,” January 7, 2010

***United States Agency for International Development IG***

United States Agency for International Development IG Report No. 9-000-10-001-P,  
“Audit of USAID’S Process for Suspension and Debarment,” October 1, 2009

***GSA IG***

General Services Administration IG Report No. A070105/O/A/F08004, “Review of  
GSA’s Suspension and Debarment Program,” December 20, 2007

## Appendix B. Suspended or Debarred Contractors That Received Awards

Based on our review of the 409 contractors, affiliates, and imputed parties from the Services and DLA, the following tables show the contractors that received contract action awards after being listed in the EPLS as suspended or debarred. Table B-1 shows the contractors, affiliates, and imputed parties that the Services and DLA awarded contract actions to after they were listed in the EPLS as suspended or debarred. The Army and DLA awarded two contract actions 2 days after the contractors were entered into the EPLS. For three contract actions, totaling \$60,614.61, the Army and 2 other Federal agencies awarded these contract actions the same day the contractor was entered into the EPLS, we excluded these examples from the tables. Table B-2 shows the contractors, affiliates, and imputed parties that other Federal agencies awarded contract actions to after the contractors were listed in the EPLS as suspended or debarred.

**Table B-1. Contract Actions Awarded to Suspended and Debarred Contractors by the Services and DLA**

Contractor Name	EPLS Entry Date	FPDS Contract Action Date	Contract Number	Contracting Activity	FPDS Action Dollar Amount
AKS Associates International	2/4/2008	2/6/2008	SPM5AB08M0129	DLA Troop Support	\$4,089.00
AKS Associates International	2/4/2008	2/8/2008	SPM4A108M1018	DLA Aviation	\$15,860.00
AKS Associates International	2/4/2008	5/15/2008	SPM4A408MVF60	DLA Aviation	\$5,490.00
ALLSTEEL, INC.	9/4/2009	9/6/2009	W912LA09P0163	Dept. of the Army W7MX USPFO ACTIVITY CA ARNG	\$5,145.00
Billfinger Berger Hochbau GmbH	3/26/2009	6/30/2009	FA561304DR005	Dept. of Air Force: USAFE CONS DA LGC	\$50,398.31
Billfinger Berger Hochbau GmbH	3/26/2009	7/2/2009	FA561304DR005	Dept. of Air Force: USAFE CONS DA LGC	\$36,342.00
GSC USA	7/27/2009	8/26/2009	SPM7MC09M4139	DLA Land and Maritime	\$2,835.00
Hilda Parker	11/23/2007	12/1/2007	SPM4A408MV572	DLA Aviation	\$22,016.00

## Appendix B. Suspended or Debarred Contractors That Received Awards (cont'd)

Table B-1. Actions Awarded to Suspended and Debarred Contractors by the Services and DLA

Contractor Name	EPLS Entry Date	FPDS Contract Action Date	Contract Number	Contracting Activity	FPDS Action Dollar Amount
Hilda Parker	11/23/2007	2/2/2008	SPM5A008M0331	DLA Troop Support	\$3,097.00
Oxnard Precision Fabrication, Inc.	11/21/2007	6/25/2008	N6339408P0408	Department of the Navy, Port Hueneme Division	\$7,743.44
Oxnard Precision Fabrication, Inc.	11/21/2007	8/27/2008	N6339408P0550	Department of the Navy, Port Hueneme Division	\$3,871.72
Oxnard Precision Fabrication, Inc.	11/21/2007	9/15/2008	N6339408P0624	Department of the Navy, Port Hueneme Division	\$355.98
Oxnard Precision Fabrication, Inc.	11/21/2007	5/10/2009	N6339409P0305	Department of the Navy, Port Hueneme Division	\$178.23
Oxnard Precision Fabrication, Inc.	11/21/2007	7/13/2009	N6339409P0456	Department of the Navy, Port Hueneme Division	\$3,871.72
Sumrall Family Enterprises, Inc.	2/25/2009	4/6/2009	N0002409C4117	Department of the Navy, NAVSEA Headquarters	\$149,424.00
Sumrall Family Enterprises, Inc.	2/25/2009	9/24/2009	N0002409C4117	Department of the Navy, NAVSEA Headquarters	\$299,928.00
United Electronics Corporation	8/27/2009	8/31/2009	W91B4N09P2423	Department of the Army, BAGRAM REG CONTR CENTER	\$6,515.66



## Appendix B. Suspended or Debarred Contractors That Received Awards (cont'd)

Table B-2. Contract Actions Awarded to Suspended or Debarred Contractors by Other Federal Agencies

Contractor Name	EPLS Entry Date	FPDS Contract Action Date	Contract Number	Contracting Activity	FPDS Action Dollar Amount
Advanced Office Concepts, LLC	9/4/2009	12/3/2009	VA341C0030	Department of Veterans Affairs	\$25,183.34
Bay-Pointe Technology, Ltd.	5/26/2009	5/28/2009	DTFACT09P00130	Dept. of Transportation/ Federal Aviation Administration	\$26,621.00
David Garza	11/21/2007	5/28/2010	INF80181AM381	U.S. Fish and Wildlife Service	\$4,000.00
David Garza	11/21/2007	6/9/2010	INF80181AM403	U.S. Fish and Wildlife Service	\$2,142.00
Nova International, Inc.	9/4/2009	9/15/2009	SGA10009M0813	Department of State	\$3,451.14
Nova International, Inc.	9/4/2009	9/22/2009	SCE20009M2669	Department of State	\$6,124.00
Nova International, Inc.	9/4/2009	9/23/2009	SGA10009M0946	Department of State	\$6,505.80
Nova International, Inc.	9/4/2009	9/28/2009	SGE50009M0875	Department of State	\$6,800.00

# Defense Procurement and Acquisition Policy Comments



OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JUN 16 2011

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL AND DIRECTOR,  
ACQUISITION AND CONTRACT MANAGEMENT, DoDIG

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS *ND 6/17/11*

SUBJECT: Response to DoDIG Draft Report, "Additional Actions Can Further Improve the DoD Suspension and Debarment Process," May 6, 2011 (Project No. D2010-D000CG-0177.000)

As requested, I am providing responses to the general content and recommendations contained in the subject report.

**Recommendation 1.**

Develop a working group to review and improve the suspension and debarment process for referring poorly performing contractors for potential suspensions and debarments.

**Response:**

Concur. A working group consisting of contracting personnel representing the Services, DLA and other defense agencies will be convened to review the suspension and debarment process. Procedures currently in use will be investigated and best practices will be recommended on improving referral procedures for poorly performing contractor for potential suspensions and debarments. Suspension and debarment officials will be contacted to assist in determining the type of information necessary in the referral process. Estimated completion date: February 2012.

**Recommendation 2.**

Develop a training program to inform contracting personnel of the suspension and debarment program and the process for referring poorly performing contractors.

**Response:**

Concur. Upon approval of the recommendations of the working group in recommendation 1 above, a training program will be developed. The group will recommend the implementing procedures whether through a formal DAU course or by Service and Agency. Estimated completion date: May 2012.

**Recommendation 3.**


Conduct training for contracting personnel on checking the Excluded Parties List System before awarding contracts.

**Response:**

Concur. Contracting personnel are trained to check the Excluded Parties List System during award preparation but must be reminded of the critical need to check the EPLS again immediately prior to signing the award document. This training will be included in appropriate DAU courses for contracting personnel. Estimated completion date: May 2012. In addition, I will send a memorandum to the acquisition community reminding them of the need to check the EPLS immediately prior to award.

The Suspension and Debarment Officers from the Services and DLA were contacted for response to the general content of the draft report. The Navy's lengthy response was sent via email as two specific questions were asked requiring answers. No other significant comments were received.

Please contact [REDACTED] if additional information is required.

  
Richard Ginman  
Director, Defense Procurement  
and Acquisition Policy





# Inspector General Department of Defense